

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and entered into by and between the Consolidated Government of Augusta, Georgia ("Augusta"), by and through its General Counsel, and \_\_\_\_\_ ("Contractor"), with reference to the following:

- A. Augusta desires certain professional services in connection with prosecuting matters in the Augusta, Georgia Magistrate Court.
- B. Contractor is qualified and desires to render such professional services to Augusta as further described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the provisions contained herein and the mutual benefits to be derived here from, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Augusta agree as follows:

1. Services and Deliverables.

- 1.1 Scope of Work; Communications. Contractor shall manage, assess, and prosecute ordinance court cases presented in magistrate court and all other duties and responsibilities in furtherance thereof, including, but not limited to, communications with opposing counsels, case resolution/plea bargaining, file preparation, and legal research.
- 1.2 Standard of Performance. Contractor represents and warrants that he/she has the necessary knowledge, experience, abilities, skills and resources to perform his/her obligations under this Agreement, and agrees to perform his/her obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices.
- 1.3 Licenses and Permits; Compliance with Law. Contractor represents and warrants that he/she has all licenses and permits necessary to conduct his/her business and perform his/her obligations under this Agreement, and agrees to comply with all applicable federal, state and local statutes, regulations, codes, ordinances and policies in performing his/her obligations under this Agreement.
- 1.4 Independent Contractor Relationship. The parties intend that Contractor's relationship to Augusta in providing services hereunder shall be that of an independent contractor. Nothing in this Agreement, nor any performance hereunder, is intended or shall be construed to create a partnership, joint venture or relationship of agency or employment between Augusta and Contractor. In providing services hereunder, Contractor shall represent himself/herself to third parties as an independent Contractor to Augusta and shall not hold itself out as having any authority to obligate Augusta.

- 1.5 Confidentiality. Contractor shall treat all information disclosed by Augusta pursuant to this Agreement as confidential, and Contractor shall not disclose or use any such information except as required in connection with the performance of his/her obligations under this Agreement.
2. Assignment of Rights Regarding Deliverables.
  - 2.1 Assignment. Contractor does hereby assign, grant, and deliver to Augusta, and Augusta hereby accepts, the entire worldwide right, title, and interest of every kind and nature whatsoever in and to the deliverables under this Agreement, including but not limited to any related intellectual property rights.
3. Fee; Expenses; Invoicing.
  - 3.1 Fee; Expenses. In consideration of Contractor performing his/her obligations under this Agreement, Augusta will pay Contractor three hundred (\$300.00) dollars per court session (arraignments and bench trials). Contractor shall be responsible and liable for any and all costs and expenses related to the performance of his/her obligations under this Agreement.
  - 3.2 Invoicing. Contractor will provide Augusta with an invoice supporting any request for fee payment. Invoice payment will be Net 30.
  - 3.3 Georgia Prompt Pay Act Not Applicable. The terms of this Agreement supersede any and all provisions of the Georgia Prompt Pay Act.
  - 3.4 Prohibition Against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business and that the Contractor has not received any non-Augusta fee related to this Agreement without the prior written consent of Augusta. For breach or violation of this warranty, Augusta shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement Price of consideration the full amount of such commission, percentage, brokerage or contingent fee.
4. Term; Termination; Survival.
  - 4.1 Term. This Agreement shall have a term of one year commencing on January 1, 2013, unless sooner terminated pursuant to Section 4.2 below. This Agreement shall automatically renew each consecutive calendar year unless thirty (30) days written notice of intent to terminate is provided to the other party.

- 4.2 Termination. This Agreement may be terminated prior to the completion of Contractor's services (i) upon thirty (30) days written notice to the other party, or (ii) by either party upon a breach of this Agreement (including, but not limited to, Contractor's services being deemed unsatisfactory by Augusta and loss of required certification and/or licensure). In the event of a termination of this Agreement pursuant to this Section 4.2, Augusta shall pay Contractor services completed as of the date of termination pursuant to Section 3.1 above.
- 4.3 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 5 below shall survive any expiration or termination of this Agreement, and each party shall remain obligated to the other party under all provisions of this Agreement that expressly or by their nature extend beyond and survive the expiration or termination of this Agreement.
- 4.4 Temporary Suspension or Delay of Performance of Contract. To the extent that it does not alter the scope of this Agreement, Augusta may unilaterally order a temporary stopping of the work, or delaying of the work to be performed by Contractor under this Agreement.
- 4.5 Specified Excuses for Delay or Non-Performance. Contractor is not responsible for delay in performance caused by hurricanes, tornadoes, floods, and other severe and unexpected acts of nature. In any such event, the Agreement price and schedule shall be equitably adjusted.
5. Indemnification.
- 5.1 Indemnification. Contractor shall indemnify, hold harmless, protect and defend Augusta and its Commissioners, elected officials, trustees, officers, employees, agents, and representatives (the "Indemnified Parties") for, from and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and attorneys' fees (the "Indemnified Matters"), of any nature whatsoever (including, but not limited to, damage to or loss of property, bodily injury or death), directly or indirectly arising out of or in connection with the performance of Contractor's obligations under this Agreement. Contractor's indemnification obligations under this Section 5.1 shall apply whether the Indemnified Matters are due in part to the concurrent fault or negligence of the Indemnified Parties or others, but shall not extend to such concurrent fault or negligence. Contractor's defense obligations under this Section 5.1 shall be with attorneys approved by Augusta, which approval shall not be unreasonably withheld.
6. Miscellaneous.
- 6.1 Power and Authority; Due Authorization; No Conflict; Enforceability. Each party represents and warrants to the other party that (i) such party has the power and

authority to execute, deliver and perform its obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement have been duly authorized by such party and do not and shall not conflict with any agreement or instrument to which it is bound, and (iii) this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

- 6.2 Entire Agreement; Severability; Further Assurances. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, understandings and negotiations, with respect to the subject matter hereof. In the event any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of the parties that such invalidity or unenforceability not invalidate or render unenforceable the remainder of the Agreement and that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed valid and enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly. Each party shall execute and deliver such further documents and take such further actions as may be required or reasonably requested by the other party to effectuate the purposes of this Agreement.
- 6.3 No Assignment; No Amendment; No Waiver. This Agreement (i) may not be assigned or transferred, in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party, and (ii) may not be amended or modified, by course of conduct or otherwise, except in a writing duly executed by each of the parties. Contractor acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Contractor is deemed to possess knowledge concerning Augusta's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to Augusta under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Contractor agrees that if it provides goods or services to Augusta under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to Augusta in excess of the any contractually authorized goods or services, as required by Augusta's Charter and Code, Augusta may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, however characterized, including, without limitation, all remedies at law or equity. Any waiver of any provision of this Agreement shall be in writing duly executed by the waiving party. The failure or delay by either party to seek redress for any

breach or default under this Agreement, or to insist upon the strict performance of any provision of this Agreement, shall not constitute a waiver thereof or of any other provision of this Agreement, and such party shall have all remedies provided herein and at law and in equity with respect to such act and any subsequent act constituting the same.

- 6.4 Right to Inspect Premises. Augusta may, at reasonable times, inspect the part of the plant, place of business, or work site of Contractor or any subcontractor of Contractor or subunit thereof which is pertinent to the performance of any contract awarded or to be awarded by Augusta.
- 6.5 Local Small Business Program. In accordance with Chapter 10B of the AUGUSTA, GA. CODE, Contractor expressly agrees to collect and maintain all records necessary to for Augusta, Georgia to evaluate the effectiveness of its Local Small Business Opportunity Program and to make such records available to Augusta, Georgia. The requirements of the Local Small Business Opportunity Program can be found at [www.augustaga.gov](http://www.augustaga.gov). In accordance with AUGUSTA, GA. CODE § 1-10-129(d)(7), for all contracts where a local small business goal has been established, the contractor is required to provide local small business utilization reports. Contractor shall report to Augusta, Georgia the total dollars paid to each local small business on each contract, and shall provide such payment affidavits, regarding payment to subcontractors as may be requested by Augusta, Georgia. Such documents shall be in the format specified by the Director of minority and small business opportunities, and shall be submitted at such times as required by Augusta, Georgia. Failure to provide such reports within the time period specified by Augusta, Georgia shall entitle Augusta, Georgia to exercise any of the remedies set forth, including but not limited to, withholding payment from the contractor and/or collecting liquidated damages.
- 6.6 Governing Law; Jurisdiction and Venue; Attorneys' Fees. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia (without regard to the conflicts or choice of law principles thereof). The parties irrevocably consent to the jurisdiction of the State of Georgia, and agree that the Superior Court of Richmond County, Georgia, shall be an appropriate and convenient place of venue to resolve any dispute with respect to this Agreement. In the event either party commences any proceeding against the other party with respect to this Agreement, the parties agree that neither party shall be entitled to recover attorneys' fees except as otherwise specifically provided for by law.
- 6.7 Construction of Agreement. The parties acknowledge and agree that both parties substantially participated in negotiating the provisions of this Agreement; and, therefore, the parties agree that this Agreement shall not be construed more favorably toward one party than the other party as a result of one party primarily drafting the Agreement. The section and other headings in this Agreement are for convenience of reference only and shall not be construed, expressly or by

implication, so as to affect the meaning or interpretation of any of the provisions hereof. This Section and other headings in this Agreement are for convenience of reference only and shall not affect, expressly or by implication, the meaning or interpretation of any of the provisions hereof.

6.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Contractor and Augusta have duly executed and delivered this Agreement.

**AUGUSTA, GEORGIA**

\_\_\_\_\_  
Andrew G. MacKenzie  
General Counsel, Augusta, Georgia

\_\_\_\_\_  
Date

**CONTRACTOR**

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Date